

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MELISSA KEEN,)
)
 Plaintiff)
)
 vs.) No. CIV-05-507-C
)
JO ANNE B. BARNHART,)
Commissioner of Social Security)
Administration,)
)
 Defendant)

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff, through counsel, brings this action for judicial review of the Commissioner's decision denying her application for supplemental security income benefits. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Valerie K. Couch for initial proceedings. Judge Couch entered her Report and Recommendation on January 17, 2006, recommending that the decision of the Commissioner be affirmed. Plaintiff has timely objected, and the Court therefore considers the matter de novo.

The relevant facts and applicable law are fairly and accurately set out in Judge Couch's Report and Recommendation and need not be repeated here. Plaintiff raises only two objections – that the evidence is not sufficient to support the Commissioner's decision, and that the agency failed to meet its burden of proof at step 5 of the evaluative process. This Court's obligation is to determine whether the factual findings are supported by substantial

evidence in the record as a whole. Despite the existence of conflicting evidence, the Court is satisfied that there is substantial evidence to support the Commissioner's decision. And the same facts relied on by the Administrative Law Judge (ALJ) in determining the extent of Plaintiff's impairment form the basis for the conclusion that Plaintiff is able to engage in substantial gainful employment. The ALJ had substantial evidentiary support for his conclusions regarding Plaintiff's credibility, and it is that credibility on which his conclusions at step 5 are based.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge. For the reasons stated therein, the decision of the Defendant Commissioner is affirmed. A judgment will enter accordingly.

IT IS SO ORDERED this 9th day of February, 2006.



ROBIN J. CAUTHRON
United States District Judge